

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARTHA BERNDT, MARTA HASTINGS,
JUDY LONGO and LINDA SCOTT, individually
and on behalf of all persons similarly situated,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS, ROBERT J. AYERS, JR.,
TERESA SCHWARTZ, JOSEPH McGRATH,
AUGUSTIN LOPEZ, D. SKERIK, MARIO
ORTIZ, and DWIGHT WINSLOW, in their
individual capacities,

Defendants.

No. C-03-3174 EDL

**ORDER RE: MOTION TO COMPEL
PRODUCTION OF DOCUMENTS AND
TO DEFINE LIMITATIONS PERIOD**

I. INTRODUCTION

Plaintiffs are female corrections officers who brought this action for a hostile work environment against Defendant California Department of Corrections (“CDC”) and individual Defendants (collectively “Defendants”). Plaintiffs allege that, since 1989, they and other female employees have been subjected to inmates exposing themselves and masturbating in their presence. Plaintiffs allege that they complained repeatedly to prison authorities regarding the inmates’ conduct, but Defendants failed to remedy the situation. Plaintiffs seek to bring this action individually and on behalf of a class of similarly-situated past, present and future female correctional officers who have experienced or will experience such behavior.

On September 21, 2004, Plaintiffs moved to compel production of documents relating to inmate indecent exposure incident reports ("115 Reports") going back to 1989 for a number of California Department of Corrections (CDC) prisons. The Court held a hearing on Plaintiffs' motion on November 2, 2004. After the hearing, the Court issued an order overruling Defendants' objections based on purported irrelevance and requiring the parties to meet and confer to resolve or at least narrow their differences relating to the motion to compel. The parties submitted "joint" reports on November 23, 2004 and again on December 1, 2004, but have not achieved any narrowing of their disputes, or even meaningfully addressed each others' issues.

Accordingly, It Is hereby Ordered that:

1. A further Hearing will be held on January 3, 2005 at 9:00 a.m. in Courtroom E.
2. On or before December 28, 2004, Plaintiffs shall file a further report stating:
 - a. Any reasons why the records from 10 institutions of Plaintiffs' choosing will not be sufficient evidence to address class certification;
 - b. Any reasons why the records that have not yet been archived from the 10 institutions of Plaintiffs' choosing will not be sufficient evidence to address class certification.
 - c. What records Plaintiffs would seek from inmates' Central Files in addition to those records Defendants have stated they are willing to allow to be copied; and
 - d. Any suggestions for sharing or reducing the burden on Defendants.
3. On or before December 28, 2004, Defendants shall file a further report stating:
 - a. The reasons for their opposition to providing records for California State Prison - Corcoran, California Substance Abuse Treatment Center, and California State Prison - Salinas Valley;
 - b. What records are available at California State Prison - Corcoran, California Substance Abuse Treatment Center, and California State Prison - Salinas Valley; and what 837 Logs and Reports are available at Pelican Bay;
 - c. A listing of the institutions that house male inmates and have computerized databases, the time period each database covers, and whether those databases can be searched to identify 115 Reports involving indecent exposure and 837 reports involving DA referrals; and

d. A reasonable and good faith estimate of the cost of producing, from each of the 10 institutions sought by Plaintiffs, those records which have not yet been archived, supported by a declaration under penalty of perjury from a person with knowledge.

IT IS SO ORDERED.

Dated: December 14, 2004

(Electronic Signature Authorized)
ELIZABETH D. LAPORTE
United States Magistrate Judge